IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5364 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

V L KELAIYA

Versus

CONSERVATOR OF FOREST

Appearance:

1. Special Civil Application No. 5364 of 1995

MR IS SUPEHIA for Petitioner No. 1

MS MANISHA LAVKUMAR, ASST.GOVT. PLEADER for Respt No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/04/2005

ORAL JUDGEMENT

1. By filing this petition under Article 227 of the Constitution of India, the petitioner has challenged the

order dated 2nd May 1994 passed by the Gujarat Services Tribunal, Gandhinagar in Appeal No. 263 of 1993 / 2208 whereby the Tribunal has dismissed the appeal filed by the present petitioner and has confirmed the orders dated 31.3.1992 and 11.3.1993 passed by Conservator of Forests, Rajkot and Principal Chief Conservator of Forests, Gandhinagar respectively.

2. At the relevant time, the petitioner was serving as Forest Extension Assistant, Bantwa, Dist. Junagadh. The petitioner was subjected to charge sheet dated 13.9.1989. As per the charge sheet, the petitioner was found to have committed misconduct of gross negligence in performance of primary duty of protection of forest and consequently causing loss to Government property, and for remaining absent from the prescribed headquarters. The particulars of the charges have been also given to the petitioner, and as per the same, the petitioner, while on duty during the period between 9.7.1982 to 15.6.1989, has not taken care to prevent illegal cutting of trees in the forest area. It was alleged that during the aforesaid period there was large scale illegal cutting of trees in the forest area. It was also alleged that the petitioner has not put any markings on the trees. The Department, thereafter, appointed an Inquiry Officer and a regular inquiry was initiated against the petitioner in connection with the aforesaid charges. The Inquiry Officer, however, found that no misconduct is committed by the petitioner. The Disciplinary Authority, however, disagreed with the report of the Inquiry Officer, and gave show cause notice to the petitioner as to why penalty of withholding of three future increments with permanent effect for 5 years should not be imposed on the petitioner. The petitioner gave reply to the said show cause notice wherein he has stated that he has not committed any misconduct and he was not negligent in discharging his duties. The disciplinary authority ultimately found that considering the evidence on record, the charges levelled against the petitioner are proved and the petitioner is negligent in performing his duties. The disciplinary authority has found, as stated at page 87 of the compilation of this petitions, that during the tenure of service of the petitioner at Bantwa, it was found that so many trees were illegally cut and that finding is given on the basis of evidence on record. The disciplinary authority also found that the inquiry officer has not taken into account the statements of the witnesses given in the preliminary inquiry in connection with the illegal cutting of trees. It is found that during the tenure of the petitioner, there was largescale cutting of trees, and though it was his duty, he has not

taken are care to prevent it. Detailed reasoning is given by the disciplinary authority, which is finding place at pages 87 and 88 of the compilation. The disciplinary authority found that about 866 trees were cut illegally in the area. The disciplinary authority accordingly found that the petitioner is guilty of charges levelled against him and imposed punishment of withholding of three annual increments for three years with future effect. The petitioner carried the matter further by preferring departmental appeal. The appellate authority also found the charges against the petitioner as proved, and the appellate authority, by its order dated 11.3.1993 at Annexure 'G' dismissed the appeal of the petitioner. The petitioner, thereafter, carried the matter before the Gujarat Civil Services Tribunal, Gandhinagar. The Tribunal also found that there is no substance in the appeal. The Tribunal, in paragraph 8 of the order held that as the total number of illegally cut trees being 866, it can safely be inferred that the person or official in charge of such forest was grossly negligent in performance of his duties. It is also observed by the Tribunal in the same paragraph that the first report made by the petitioner were only 10 and such reports are for a negligible number of tress in proportion to a total number of 866 trees cut illegally. It was thus found that the appellant was not vigilant in performance of his duties. By a reasoned order, the Tribunal has dismissed the appeal, against which the petitioner has preferred the present petition which is in the nature of Article 227 of the Constitution.

3. Mr. Supheia, learned counsel for the petitioner submitted that reply given by the petitioner to the show cause notice is not properly considered by the disciplinary authority, and, therefore, the order is unsustainable. In order to substantiate his say, he has relied upon a decision of the learned Single Judge in Special Civil Application No. 499 of 1999. In the said petition, the petitioner, who had already retired from service, directly approached this Court under Article 226 of the Constitution contending that after his retirement, a cut in his pension was imposed. The Court found that before inflicting the punishment, the reply of the petitioner was not taken into consideration. Under the circumstances, the said petition was allowed, and the Letters Patent Appeal filed against the said judgment was also dismissed by the Division Bench of this Court.

4. So far as the present case is concerned, it is required to be noted that this is a petition under Article 227 of the Constitution, and this Court is

required to see whether any error of law or of jurisdiction is committed by the Tribunal. The reply of the petitioner has been taken into consideration by the disciplinary authority. Apart from the said aspect, even this point was not specifically canvassed before the Tribunal. Learned Assistant Government Pleader, Ms. Manisha Lavkumar has pointed out that before the Tribunal, the appeal was argued mainly on the ground that it was not the part of the duty of the appellant to protect the forest or to see whether there is any illegal cutting of trees and that such duty is cast on Guard and Range Forest Officer. The Tribunal has recorded detailed findings on all the points argued before it. The Tribunal has also examined the duties which the petitioner was required to perform and held that as per the provisions of Forest Manual, it is the duty and responsibility of every forest employee and official to protect the forest in the area of his duty. The Tribunal thus found that the petitioner has failed to discharge his duties and he was grossly negligent in performance of his duties for protection of forest in the area of his duty. The Tribunal, in paragraph 7 of the order, observed that "there is no denial and as a matter of fact, there can be no denial of large scale illegal cutting of as many as 866 trees in Bantwa Round during the charge of the appellant". The order passed by the Tribunal is a reasoned order.

5. Ms. Manisha Lavkumar submitted that eventhough the show cause notice was issued to the petitioner for imposing penalty of withholding of three increments with permanent effect for five years, the disciplinary authority has infact taken a lenient view, and has imposed a lesser punishment for withholding of three annual increments with permanent effect for three years only. She, therefore, submitted that the Disciplinary authority has taken into consideration all the relevant aspects of the matter, and, therefore also, no interference is called for.

6. Having considered the arguments advanced by Mr. Supheia for the petitioner and Ms. Manisha Lavkumar for the respondents, and having gone through the record of the case, I do not find any substance in the matter. It is required to be noted that the powers of this Court under Article 227 of the Constitution is very limited, and this Court, in a petition under Article 227, is not expected to decide the matter as if it is a regular appeal. In the facts and circumstances of the present case, it cannot be said that the Tribunal has committed any error of law or of jurisdiction in deciding the

appeal. Hence there is no substance in the petition.

7. No other points were raised by learned advocate Mr. Supheia for the petitioner at the time of hearing of this petition.

8. In the result, I do not find any merit in the petition, and this petition deserves to be rejected, and is hereby rejected. Rule is discharged. No order as to costs.

mathew [P.B.MAJMUDAR, J.]